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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,269	01/23/2004	Joseph Z. Sleiman	92835-10	5782

22463 7590 06/20/2005

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EXAMINER

PURVIS, SUE A

ART UNIT	PAPER NUMBER
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1734

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/762,269

Applicant(s)

SLEIMAN ET AL.

Examiner

Sue A. Purvis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 23 Jan 2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Ewert et al. (US Patent No. 6,006,808).

Regarding claim 1, Ewert discloses a tamping labeler for use in a labeling apparatus with a tamping face (33) having a base (20) and projections (42) projecting outwardly from the base for maintaining at least a substantial portion of a label at a stand off from the base. (See Figure 6.)

Regarding claim 2, the tamping face includes a plurality of holes (36). (See Figure 5b.)

3. Claims 1-6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Varon et al. (US Patent No. 4,244,763).

Regarding claim 1, Varon discloses a tamping labeler for use in a labeling apparatus with a tamping face (63) having a base (65) and projections (125) projecting outwardly from the base for maintaining at least a substantial portion of a label at a stand off from the base. (See Figures 15 and 16.)

Regarding claim 2, the tamping face includes a plurality of holes (121).

Regarding claim 3, the projections (125) are arranged such that each hole is at least partially surrounded by the projections. (Figure 16.)

Regarding claim 4, the projections (125) as seen in Figure 15 is raised like "ridges."

Regarding claim 5, the projections (125) are circular ridges. (See Figure 16.)

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Regarding claim 6, the projections (125) are domes. (See Figure 15.)

Regarding claim 9, the projection (125) and the holes therein results in the tamping face being textured.

4. Claims 1-3, 7, 8, 10, 12, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al. (US Patent Application Pub. No. US 2001/0037853 A1).

Regarding claims 1 and 12, Anderson discloses a tamping labeler for use in a labeling apparatus with a tamping face (38) having a base (22) and projections (26) projecting outwardly from the base for maintaining at least a substantial portion of a label at a stand off from the base. (See Figures 1 and 6.)

Regarding claim 2, the tamping face includes a plurality of holes (43). (Figure 10.)

Regarding claim 3, the projections (26) are arranged such that each hole is at least partially surrounded by the projections. (Figure 6.)

Regarding claim 7, further comprising flexible accordion sides (45) for allowing the tamping labeler to extend and retract.

Regarding claims 8 and 19, including a valve for when the bellows is extended by positive air pressure, the valve is closed to prevent blowing the label off of the end of the bellows and thereby missing the fruit. (Page 1, paragraph 0006.)

Regarding claim 10, Anderson discloses bellows for use in a labeling apparatus with a tamping face (38) having a base (22) and projections (26) projecting outwardly from said base for maintaining a label at a stand off from the base.

5. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Strohmeyer et al. (US Patent No. 5,833,803).

The applicant is reminded that a claim preamble "has the import that the claim as a whole suggests for it." *Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995). With respect to this

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preamble, the body of the claim does not refer to the bellows and the preamble is not necessary "to give life, meaning, and vitality to the claim." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999). Therefore, the preamble and the term "bellows" were not given patentable weight.

Regarding claim 11, Strohmeyer includes a tamping face having projections. (See Figure 13A and 13B.)

6. Claims 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Weisbeck (US Patent No. 6,257,294 B1).

Regarding claim 12, Weisbeck discloses a product labeling apparatus including an indexing turret (4) with a plurality of tamping labelers (5) with a base (30) and projections projecting outwardly from the base. (Figures 7 and 8A.) The apparatus includes a vacuum chamber and a positive pressure chamber. (Figure 8B.) Weisbeck also includes a label supply for supplying a label to the tamping face. (Figure 3.)

Regarding claim 13, Weisbeck also teaches that bellows type applicator can be used instead of the projecting head (5).

Regarding claim 14, Weisbeck includes one or more holes (9A) located at a top portion of the applicator (the portion on which the label is placed) to supply the suction to hold the label (2) on the pickup head (5A) as it is transported before being deposited on the object (7). (Figure 8A.)

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having

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ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 12-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Varon in view of Weisbeck.

Regarding claim 12, Varon discloses an indexing turret including a plurality of tamping labelers for use in a labeling apparatus with a tamping face (63) having a base (65) and projections (125) projecting outwardly from the base for maintaining at least a substantial portion of a label at a stand off from the base. (See Figures 15 and 16.) Varon includes a vacuum chamber but does not have a positive pressure chamber.

Weisbeck discloses using both a vacuum chamber and a positive pressure chamber in a tamping labeler.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a positive pressure chamber in the device of Varon along with the vacuum chamber, because using both is known in the art as shown by Weisbeck. Furthermore, as Varon is, the label can only be removed from the tamping face by pressing the label onto the object, adding a pressure chamber creates a way that the label can be removed by blowing off the label, thus it can be removed if the label is defective.

Regarding claim 13, Varon discloses a flexible applicator, but not a bellows type applicator. Weisbeck teaches bellows type applicators are known. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a bellows type applicator in the device of Varon. It is appreciated that the applicator face of the bellows type applicator can be the same as the flexible applicator of Varon with a projection surrounding the hole thereon.

Regarding claim 14, the tamping face includes a plurality of holes (121).

Regarding claim 15, the projections (125) are arranged such that each hole is at least partially surrounded by the projections. (Figure 16.)

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Regarding claim 16, the projections (125) as seen in Figure 15 is raised like "ridges."

Regarding claim 17, the projections (125) are circular ridges. (See Figure 16.)

Regarding claim 18, the projections (125) are domes. (See Figure 15.)


Regarding claim 20, the projection (125) and the holes therein results in the tamping face being textured.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Purvis whose telephone number is (571) 272-1236. The examiner can normally be reached on Monday through Friday 9am to 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher A. Fiorilla can be reached on (571) 272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sue A. Purvis  
Primary Examiner  
Art Unit 1734

SP  
June 13, 2005